

Montana Transportation Commission

December 10, 2004 meeting

MDT Headquarters Building ~ 2701 Prospect Avenue, Helena

In attendance:

Shiell Anderson, Transportation Commission Chair
Nancy Espy, Transportation Commission Vice Chair
Kevin Howlett, Transportation Commissioner
Dan Rice, Transportation Commissioner
Dave Galt, Director –Montana Department of
Transportation (MDT)
Jim Currie, MDT Deputy Director

Tim Reardon, MDT Chief Counsel
Lynn Zanto and Gary Larson for Sandra Straehl, MDT
Rail, Transit & Planning Administrator
Joel Marshik, MDT Chief Engineer
Loran Frazier, Acting Chief Engineer
Mike Duman, Assistant FHWA Division Administrator
Janice Brown, FHWA Division Administrator

Please note: the complete recorded minutes are available for review on the commission's website at http://www.mdt.state.mt.us/trans_comm/. You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary at (406) 444-7200 or ldemont@state.mt.us. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

Vice Chair Espy called the meeting to order at 9:03 am. She explained that Chairman Anderson would be arriving in about 15 minutes.

Currie introduced Charity Watt Levis, the department's new public information officer.

Agenda item 1: Montana Scenic-Historic Byways Program draft rules

Lynn Zanto, MDT Urban Planning Section Supervisor, said since the commission's April 27th meeting, in which the commission directed MDT to move forward with a limited scenic-historic byways program, we have worked with the Secretary of State's office on developing these rules. The draft rules presented today meet the conditions set forward and comply with state law. The public hearing was held November 29. Staff attorney Lyle Manley is here to present the comments received.

Manley said the rules were published in the state register on November 4th, and Tim Reardon presided as the hearings officer at the November 29th public hearing. We received some verbal as well as written comments. Manley explained that comments were accepted through early this week and distributed the most recent version of the notice of adoption labeled DRAFT 3. Manley went through the comments received and the department's responses contained in draft 3.

Commissioner Howlett expressed his appreciation that the tribal governments were treated as equals with local government and their concerns were given equal weight.

Galt relayed a conversation he'd had with Chairman Anderson about protecting private property rights. Staff worked out a solution that the chairman approved of. Chairman Anderson entered the room at that point and confirmed that his concerns had been satisfactorily addressed.

Commissioner Howlett moved to accept staff recommendations to adopt the rules; Commissioner Rice seconded the motion. All four commissioners present voted aye.

Director Galt expressed his appreciation to the commission for their action, and bringing closure to an issue that's been on the table in Montana for about 20 years.

Farewell to Chief Engineer Marshik and Director Galt

Currie reminded the commission that Chief Engineer Joel Marshik was here for his last day, along with Director Dave Galt.

Agenda item 2: Adoption/amendment to Outdoor Advertising Rules

Staff Attorney Nick Rotering summarized the activity this year regarding the update to the outdoor advertising rules: in April, the commission authorized MDT to finalize the proposed changes; the proposed rules were published in the September register; and a public hearing was held October 18, presided over by Mr. Reardon. Oral and written comments were received and before you now is the final order.

Rotering summarized the testimony received and the department's response. Most of the comments were favorable and supported the department's draft. The one issue that came up concerns tri-vision signs. Lamar, a nationwide advertising company, suggested that these variable message boards be allowed. This allows them to sell three advertisements on one board. It is very popular nationwide. We do *not* propose to include that suggestion in this rule revision because it would not have gone through the entire public involvement process. Also, Save America's Visual Environment (SAVE) requested the "welcome to" signs be smaller than local governments have requested; we are supporting the consensus of local government.

Galt spoke to the motivation for the rule changes. He wanted to address the rules pertaining to on-premise signs. Those rules were not very friendly to agricultural interests and I don't believe that was the intent of the beautification act. There are a significant number of signs that don't comply with federal regulations. In the past, we have not been as expeditious as we could be in addressing those, primarily because of cowardice because it can be such a political issue to take somebody's sign down. FHWA put us on notice and we launched an aggressive campaign to remove the illegal signs. The issue on secondary roads is very problematic – we want to do some studies on what is allowed outside the clear zone but within the right-of-way so that we can go to the legislature with sufficient information.

Commissioner Rice asked about 18-6-202 relating to temporary advertising such as inflatable balloons on 10th Avenue South in Great Falls. Would this require them to get permitted? Rotering said these rules don't apply to off-premise advertising; there may be city ordinances that might apply.

Commissioner Rice asked about ranch and rural directional signs – we are allowing one sign and that makes sense. If you place that sign right where you want them to turn off, or slow down, does that create a safety issue? Hurley said we don't believe it creates a safety issue. It falls within the federal guidelines.

Commissioner Rice asked about 18-6-262 regarding signs that are blank or abandoned – are we creating a high standard that we might not be willing to enforce? Rotering explained that larger companies place public service announcements on boards that are not being used for advertising, so that they're not blank. We work with owners and allow them a reasonable amount of time to deal with signs that are damaged by weather or vandalism. I don't think we're doing something here that's creating a hardship to the sign owner.

Chairman Anderson asked if one could erect a non-conforming sign. Rotering explained that the original outdoor advertising statute was created by the legislative in 1971. The rule-making process didn't occur until three years later by the agency. We call those the grandfathered signs because they are non-conforming but were permitted, and we have a master list of those signs. There is a second set of signs that came into existence from the mid 1970s until the commission revised the rules about 1995, and we have a list of those as well. He said one couldn't erect a non-conforming sign now and be legal.

Commissioner Espy asked about historical signs, for example, the sign advertising the Range Riders Museum. Is it a legal sign? Hurley said we consider that to be cultural sign and the applicable rules are broader than for outdoor advertising signs.

Commissioner Espy entered into the record the e-mail request from Anita Kurtz-Magee of Missoula requesting the commission consider the policy adopted by the state of Vermont (no billboards permitted).

Commissioner Rice moved to accept staff recommendations to adopt the amended outdoor advertising rules as presented; Commissioner Espy seconded the motion. All four commissioners present voted aye.

Agenda item 3: Commission policies

Reardon said we had a discussion in Butte about policies that are in the minutes, not formally adopted as numbered policy statements, but followed by both the commission and staff. Demont called out those from the minutes and put them in formal policy statement format.

Delegation of authority to award highway contracts

Reardon stressed the expediency of allowing the department to exercise financial authority up to \$50,000 which has its root in statute. This would benefit the commission as well as the department. He urged the commission to adopt the policy.

Collection of charitable contributions on highway facilities

Reardon said the idea is not to prohibit the activity, since it is an important function for a lot of groups. The idea is to provide some guidelines that promote communication with the department and consistency with regard to traffic control and safety. It also gives our district staff a policy to fall back on. He recommended the commission adopt the policy.

Guidelines and mechanisms for transportation partnerships

This gives local governments the opportunity to partner with the department to accelerate projects. => Commissioner Espy asked that this be placed in the commission's orientation book. Chairman Anderson suggested leaving the document the way it is since it would be hard to distill something of this magnitude into a policy statement. Currie recommended leaving it in guideline form; he hesitated to have anything in place that could detract from the department's flexibility to work with local governments on delivering projects.

Commissioner Espy moved to segregate the *Guidelines and mechanisms for transportation partnerships* out from the policy motion; Commissioner Rice seconded the motion. All four commissioners voted aye.

Currie said the commission probably shouldn't adopt the guidelines without some input from local government. Zanto said on occasion she will get a local government coming forward with a partnering idea and will provide them with a copy of the guidelines at that time, therefore some – but not all – local governments have seen the guidelines.

Reardon posed the philosophical question, "When does a guideline become a policy?" He suggested that at some point perhaps the commission should have a broader policy to the effect that the commission will consider accelerating local projects based on local contributions.

=> Anderson asked that the guidelines be circulated to all the cities and town and allow for their comment.

Reardon said the benefit of having this information in policy format provides the public proper notice.

Contract award guidelines

Brown said the policy statement called "contract award guidelines" contains a definition of responsive, responsible bidder that is too narrow and is not the same definition as is contained in the specifications. MDT's specifications refer to responsive and responsible in separate definitions. => Reardon suggested amending the policy to refer to the specifications. That allows for changes in the specifications without having to change the commission's policy.

Commissioner Rice asked if the *Delegation of authority to award highway contracts* policy includes authority to delegate maintenance contracts which can be quite large. Reardon said "construction" and "reconstruction" are defined and "maintenance" is defined separately in

Title 60. They are distinct activities. He said there is no problem in adding that, it would be a cover and wouldn't hurt the policy. Our maintenance contracts, for the most part, are done through the procurement process. The commission does approve some maintenance contracts, e.g. for stockpiling sand. Commissioner Rice said if maintenance begins to perform tasks that look more like construction than they do materials acquisition, that's not a real bright line. Reardon said there are instances when maintenance does work that exceeds \$50,000.

Currie said there are three categories of projects that are done by maintenance: our striping program, reactive overlays, and crack seals done as part of the preventative maintenance program. Currie said if we have a light winter and it's late in the fiscal year, they sometimes put contracts together very late in the year so we can maximize the available revenue. We would like to ensure the commission's meeting schedule doesn't preclude that sort of activity.

Commissioner Rice moved to adopt as policy the following:

- The draft, as presented, for *Reapproving a project based on increase scope and cost*.
- The draft for *Delegation of authority to award highway contracts* amended to include maintenance contracts so long as the maintenance department is not prevented from end-of-the-fiscal-year quick award projects.
- The draft for *Contract award guidelines* to reflect the department's specifications in the definition of responsive, responsible bidder.
- The draft, as presented, for *Collection of charitable contributions on highway facilities*.

Commissioner Espy seconded the motion.

Currie asked if it was too late for Blacker to comment. Blacker said he is concerned about the ramifications of this policy. Maintenance currently has the ability to respond quickly to a need; it is totally different from the construction engineering side of the game. Although we plan a lot of what we do, there are situations such as reactive overlays where contracts that are well over the \$50,000 threshold that would be delayed if we had to wait for commission action at a scheduled commission meeting. In his mind it would diminish the department's ability to respond quickly to unforeseen issues.

Commissioner Howlett asked if we could amend one of these rules to incorporate Blacker's comments. Reardon said the statute applies to construction and reconstruction. The items John described fit clearly under maintenance. Emergency situations, depending on how those are classified, are a different condition and the emergency authority is there for us. The commission allows the department to bring those projects to the commission for approval after the fact.

Commissioner Rice asked if it would be satisfactory to make it clear that the policy doesn't apply to emergency or unforeseen activities. Blacks said those terms tend to be different to the eye of the beholder and it would be difficult to attain consistency statewide. He proposed asking the commission to approve a dollar amount. Reardon suggested referencing maintenance where appropriate.

Commissioner Rice said we do spend a large amount of money on third party contracts that are not emergency or unforeseen.

Three commissioners voted aye (Commissioners Rice, Howlett and Espy). Chairman Anderson opposed.

Agenda item 16: Assessment of contract time and liquidated damages on maintenance contract Highway 306810-RR

John Blacker, MDT maintenance administrator, explained that this assessment of contract time and liquidated damages is in regards to a striping contract let in 2003. The required completion date in the contract was August 15, 2003. The contract, worth \$370,134.79, was awarded to Highway Specialties, Inc. on April 18, 2003.

The contractor began work on October 27, 2003. The work was located in the Wolf Point area. Weather prevented them from completing the striping. They resumed work in the spring and completed the work in March 2004. The clock kept ticking even while the contractor could not work because of weather: the department is applying \$68,112 of liquidated damages.

The department has a goal of getting 85 percent of our roads striped by July 1. We used to let a single contract and striping would be done from April to November as the contractor worked his way across the state. We broke that out into numerous contracts in order to get the striping down sooner. Blacker said whatever decision is made here will be applicable to all contracts the department lets. Also, we are attempting to offset our liability. There was no stripe on that road between August and March.

Frazier said he has a couple of concerns. There are in essence two types of contracts: completion days, and calendar day contract with a completion date. There are different types of liquidated damages for each type. We have a calendar day completion for a good reason...we need the work done by that date.

Blacker said the assessment of liquidated damages is as much for the protection of the contractor as it is the department. It prevents contractors from over-bidding and taking on too many jobs.

Kerry Gray made the case for Highway Specialties, Inc. (HSI). He said he agreed with the details regarding when the work was started and when it was finished, but differed in his interpretation of the contract. He said we have been told that liquidated damages are not intended as a penalty but to cover the cost to the department because of the delay. We became curious as to what this actually cost the department. Tab 5 shows the actual costs according to our research. It was probably less than 2 or 3 percent of the total cost of the project. It seems obvious to me is that this is a penalty not liquidated damages therefore I totally disagree with the amount assessed.

He said the last issue was the letter from Staff Attorney Garrison referring to commission policy 11, which implies a threat of debarment. We should be able to come before the commission to question department action without being threatened.

Commissioner Howlett said timelines are set for a reason. Those are known at the time contractors bid on projects. The second thing is liability. I'm really concerned about what kind of danger we put the traveling public in because the road wasn't striped. The risk is significant; I'm thankful there were no accidents. Other people would have bid the project if they could have had the extra time.

Blacker said there was a stripe there but it did not meet the department's self-imposed limitations for an acceptable level of retro-reflectivity. That's what enables it to be seen during the dark, which is predominant during the winter.

Blacker said it's important to understand that these contracts are not developed by MDT alone. For the last seven years, we have included contractors in the contract development process. They let us know what problems they are having with the contract and give us suggestions for improving the contracts. We make adjustments every year based on their input; after all, they are the experts.

Galt said the department needs to take responsibility for its action and it does seem to have been heavy-handed. We will deal with it.

Commissioner Rice asked Reardon for a primer on actual costs incurred by the department versus the issue of a penalty. Reardon said the purpose of liquidated damages is to allow folks to agree to terms up front. Those sliding scale dollar figures are not arbitrarily chosen. A cost study is done every other year by our construction bureau and adapted to the maintenance contracts. It is a difficult subject, but in this case, it is the amount of time, not the amount of money that is an issue. If it had only been a few days of liquidated damages, it would probably not have been disputed. What puts this case in a different league is the

completion date specified in the contract. The existing terms were not met. This is the largest time frame of liquidated damages I have ever seen.

Commissioner Rice asked what is the recourse for a contractor from this point. Reardon said the next recourse is state district court. Commissioner Rice asked if that would invoke policy 11. Reardon said not as long he is chief attorney.

Reardon explained that this policy was adopted in 2000 and it had to do with submissions of proposals and a selection/recommendation by the department. Before we could get to the commission with that recommendation, the contractor wanted to either be relieved of the bid or negotiate the terms of the contract. This wasn't an isolated instance and hence the policy.

Commissioner Rice disclosed that Kerry had been a good friend of his for decades and said he couldn't make a motion and wanted that to be clear.

Blacker said he wanted to warn the commission that they would be likely to see a similar issue coming before them soon.

Chairman Anderson said he wanted to reserve the opportunity to make a motion later in the meeting if he so chose.

Cary Hegreberg, executive director of the Montana Contractors' Association, said he has an issue with policy 11. He asked that it be suspended pending reassessment. We think this is an example where it has been misapplied. We question some of the intent of policy 11.

Galt said the department's position would be to concur with MCA's request to reassess the policy but would not concur with their request to suspend the policy. We have spent a lot of time over the last four years looking at the commission's policies, and digging out decisions and actions from the minutes of past commissions that have become unofficial policy through evolution. The policy could certainly be reassessed and the wording may need to be changed. This policy shouldn't apply to this type of situation. Commissioner Espy, Reardon and Currie have the institutional memory of what led to the passage of policy 11. It was a very serious deliberation and situation.

Commissioner Espy thanked Galt for defending the actions of the commission and supported the idea of reviewing the policy.

Chairman Anderson postponed action until this afternoon.

(discussion resumed in the afternoon)

Gray proposed being charged for the 90 days they didn't work and should have, but not the winter days when they couldn't have worked.

Commissioner Howlett proposed going with staff recommendations.

Chairman Anderson said the law and contract seems clear.

No motion was made therefore the liquidated damages stand.

Commissioner Rice wanted to discuss policy 11. In some sense, we thank you [HSI] for bringing this issue up. We need to develop a culture where we do the right thing the first time in whatever we do.

Galt said he wants the commission to read the discussion surrounding the origin of policy 11. => He will have those minutes sent to the commissioners and solicited their comments on changing the policy. We will have this as an item on the next commission agenda.

Statement from MCA

Hegreberg thanked the commission for the great relationship the MCA has enjoyed over the past few years with the commission. They've been fair and open-minded. He also expressed MCA's appreciation for Director Galt, particularly for his openness and for providing MCA the opportunity to interact with the department, the commission and the director's office. It has been a good climate of cooperation.

Agenda item 12: Proposed interchange at Gallatin Field Airport

Zanto said the delegation is aware of commission policy 13 regarding any new interchange proposals. My staff have been assisting the group with traffic modeling work; this will determine what the state contribution might be if the commission would at any point be interested in cost-participating in this interchange.

Jeff Ebert, Butte district administrator, explained that his predecessor Jason Giard supported this proposal as a priority for the Butte district. Ebert continues that support. There has been significant local coordination and support behind this proposal, along with good coordination with MDT staff. The proposal has been conceptual up until now.

Former Transportation Commissioner Patricia Abelin introduced the delegation from Belgrade and Bozeman: Debbie Youngberg, executive director of the Belgrade Chamber of Commerce; John Youngberg, Belgrade city councilman and member of the city-county planning board; Joe Menicucci, Belgrade city manager; Rick Allison, chairman of the chamber transportation committee; Ted Mathis, Gallatin Field airport manager; Bill Murdoch, Gallatin County commissioner; Larry Watson, grants administrator from Gallatin county; and Phil Forbes and Scott Bell from Morrison-Maierle.

John Youngberg distributed a handout and explained that Belgrade has experienced a 333% rate of growth. He offered more statistics showing the high rate of growth and the need for an additional interchange.

Debbie Youngberg testified in support of the interchange since there is currently one way in and one way out of Belgrade. It would reduce the traffic on Jackrabbit interchange, on Highway 10 which is a very unsafe two-lane, on Jackrabbit lane going south and Main Street. The business community is concerned because they want people to be able to get in and out of Belgrade, as well as move around within the city. Several business owners are willing to assist financially in this endeavor.

Ted Mathis, airport director at Gallatin Field airport, cited Belgrade as one of the 10 busiest airports in the northwest. It will serve over 600,000 passengers this year, which is more than Helena, Great Falls and Butte combined. We routinely have over 1,000 rental cars available, and 850 parking spots with overflow parking in a field south of the lot. At Thanksgiving, there were 50 cars parked in the overflow area. We expect to accommodate over one million in the future, and need an interchange. We are willing to pay our fair share of the cost of the facility.

Bill Murdoch, Gallatin county commissioner, stood in support of the proposal. There is a disconnect between the growth and the infrastructure. The farm-to-market road, known as the frontage road or Highway 10, has an unacceptable number of fatalities. This interchange would solve many of our transportation needs. Realizing we can't just come with our hands out, we are prepared to come forward responsibly. We are the only county in Montana that has impact fees. We will commit those impact fees to this project. Developers such as JTL, along with the city of Belgrade and Yellowstone Park, are also prepared to contribute financially. We can't afford to wait and we are prepared to do our share.

Abelin said there is a possibility of closing one of the at-grade crossings, and then there would be railroad money to add to the project.

Chairman Anderson asked about traffic counts on the east and west side of Belgrade and how those support the location proposed. Morrison-Maierle explained that the traffic model

developed helped justify the location, as well as the county's road policy and the city's planning documents.

Commissioner Espy commended the group for their efforts, determination and initiative.

Chairman Anderson asked Ebert if something is being done to get the cars from backing up onto the interstate at the existing Belgrade interchange. Ebert said he has initiated a study request. He suspects it has something to do with the traffic signal timing but the study will reveal that.

Ebert asked what would be the next steps. Should we proceed with the memorandum of agreement? Commissioner Howlett asked about the forthcoming discussions about funding for urban areas [agenda item 11]. Currie said this project would not be funded from the urban program, but from the interstate program. The local bonding issue, as being discussed in regards to the *Kalispell – N Meridian Rd* project, is a proposal to get legislation to allow local governments to issue bonds and use the Federal-aid revenue stream from the urban program to repay the debt.

Commissioner Rice asked if the growth isn't so fast that the solution today would be out-of-date by the time it is actually implemented.

Galt proposed we put something on the table to fund some analysis work for this interchange proposal, perhaps \$250,000 to start the process of working on preliminary engineering and the environmental document. If this is to be a reality in 2008 or 2009, we need to get moving on the environmental document quickly.

Currie said we are looking at three new interchanges in the state: Helena north, Helena south and the Belgrade proposal. We have programmed the Helena north interchange. The Helena south interchange has a separate funding solution to it. The Belgrade interchange in essence, as far as the department and commission is concerned, doesn't exist. Starting in 2008, the commission has set aside \$10 million per year for capacity expansion. We ought to program this so it is a viable project in the system that charges can accrue to.

Mike Duman noted that on the Helena north project already had an environmental document when the commission set aside the funding for preliminary engineering. He suggested the environmental analysis for the Belgrade interchange proposal would cost more than \$250,000. Currie confirmed with Zanto that the locals (the sponsor) will be funding the environmental document per the commission policy. The \$250,000 would be used for our staff to review work and coordinate with the locals.

Chairman Anderson asked where will the money come from. Currie said last month the commission approved \$45 million for PE [preliminary engineering], right-of-way, IC [incidental construction], etc. This \$250,000 would come out of that.

Zanto asked if the local government has the funding ready for the environmental document. Murdoch said they are committed to paying for the environmental document provided this becomes a programmed project and it is a high priority, next in the hopper.

Galt expressed concern that the group would want their money back if the project didn't advance to their satisfaction, and rightly so. Duman concurred with Galt's position that a timeline needs to be established for the project so it doesn't end up in a position of "we'll get to it when we get to it".

Commissioner Howlett said we will not bump another project for this one. We could use the \$10 million reserve for this.

Currie said when the commission programmed \$10 million for capacity expansion, it demonstrated their serious commitment to advance projects like this. He said there are two issues: one is the targeted completion date and the other is fundability. The amount of local contribution will have a huge impact on the possible completion date.

Brown said we need to realize that we don't know what type of environmental document is needed, and we don't know what type of work is needed out there. She suggested what is needed is a feasibility study. => Galt said the department needs to come back to the next commission meeting with a solid recommendation to the commission.

Commissioner Anderson moved to program \$250,000 to investigate a solution to the traffic problems in Belgrade; Commissioner Espy seconded the motion.

Commissioner Rice asked if this was a shortcut to the P³ process. Galt said it wasn't since we used P³ to come up with the \$10 million set-aside. Currie said one component of P³ is the congestion management system and he suspected that system would reflect the traffic problems in the Belgrade area.

Commissioner Rice expressed a concern that this would turn into a race to the commission and generate a lot of heartache. He suggested we institute a fairly rigorous system to aid in responding to similar requests in the future.

Galt said P³ allows us to make decisions on a large scale. He didn't think P³ was intended as a project selection tool; project nominations are made by district staff. Currie said there has been a fair amount of staff analysis to even allow this proposal to get this point. Zanto said a federal requirement for an interchange is that there be a regional need; it may be easier to meet this requirement for this proposal given the proximity to the airport and Yellowstone National Park.

The commission previously approved funding, approximately \$2 million, for the Our Lady of the Rockies interchange in Butte. Currie confirmed that happened over four years ago and to his knowledge, hadn't progressed. The Butte interchange would not jeopardize the priority status of the Belgrade interchange.

All four commissioners voted aye.

Agenda item 8: Havre urban area priorities

Zanto said this item was requested by the city of Havre and Hill County. The change consists of directing STP-Urban funds to storm drain improvements on the US 2 – Havre project instead of proceeding with their current priority, *Bullhook Road/12th Avenue – Havre*.

The Bullhook Road proposal received significant local opposition. Staff reassessed the original need, which was to reduce congestion on 5th Avenue. Federal concurrence on this change was given by FHWA, and should eliminate our concern regarding repayment of federal funds expended to date.

If the commission agrees to the change in priority, there is some housecleaning that will need to follow. The nonexistent route (originally proposed to be built) may not be functionally classified under federal criteria and therefore is not eligible to be on the Urban System, and must be removed.

Bob Rice, mayor of Havre, said on the surface this project may not seem that important. However, the storm system takes care of the east end and every time we have a storm, the east end floods out and folks have water in the basements of their homes.

Commissioner Rice moved to accept staff recommendations to:

- Approve the local governments' request to revise Havre STP-Urban funded priorities by removing the *Bullhook Rd/12th Ave-Havre* project from the program and approving the use of STP-Urban funds for eligible storm drain improvement costs associated with the *US 2 – Havre* project.
- Remove the Bullhook Rd/12th Ave corridor from the Urban Highway System. The corridor begins at the intersection of 5th Avenue and Dell Street proceeds east to the intersection of 12th Avenue and 18th Street, continues north along 12th Avenue from 18th Street to 8th Street, and then continues along 8th Street to the intersection with 14th Avenue.

- Reclassify existing roadways along the Bullhook Rd/12th Avenue corridor from urban collectors to local streets.
- Drop the urban collector classification of the un-built segments along the Bullhook Rd/12th Avenue corridor.

Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 7: Proposed Urban Highway System actions in Whitefish

Zanto said this item is at the request of the city of Whitefish and Flathead County. The routes that are being proposed for removal from the Urban Highway System could then be maintained locally and not subject to Urban System requirements.

Frazier asked if the Baker Avenue segment from 2nd Street to 7th Street was slated to become part of US 93 as one of the alternatives in the EIS. The city of Whitefish representative, John Wilson, Whitefish Public Works Director confirmed that it is and asked to remove item 1 from the requested changes and recommend approval of items 2 through 5.

Commissioner Howlett moved to accept staff recommendations to approve the removal of the following four routes in Whitefish from the Urban Highway System:

1. 7th Street (U-12003), from Karrow Avenue (U-12004) to Baker Avenue (U-12002). The total length of this route is 0.647 miles.
2. Karrow Avenue (U-12004), from 2nd Street (N-5) to 7th Street (U-12003). The total length of this route is 0.37 miles.
3. 13th Street/Columbia Avenue/7th Street/Pine Avenue (U-12005), from Spokane Avenue (N-5) to 2nd Street (U-12006). The total length of this route is 1.081 miles.
4. 2nd Street (U-12006) from Spokane Avenue (N-5) to Pine Avenue (U-12005). The total length of this route is 0.343 miles.

Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 6: Urban Highway System revision – Forestvale Rd in Helena

Commissioner Rice moved to accept staff recommendations to approve removal of Forestvale Road between Montana Avenue and Interstate 15 from the Urban Highway System, and dropping the urban minor arterial classification of the un-built Forestvale segment between Montana Avenue and Interstate 15; Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 13: Speed limit studies

Frazier summarized the traffic and engineering studies for the following:

- a. Secondary 269 rural segment – Corvallis to Stevensville
- b. US 212 – Joliet
- c. MT 59 – Miles City south

There is local government concurrence/support for the recommendations from MDT.

Commissioner Howlett moved to accept staff recommendations to approve the special speed zones as proposed; Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 11: Increased funding for urban areas

Zanto – this is a continuation of the discussion begun in October. The commission approved staff looking at redistributing CMAQ funds. On December 2, we met with the urban areas. We considered areas of high growth, plus the commission's desire to ensure air quality funding for rural as well as urban areas. Some of the proposals are new and some are continuing from work done under TEA-21.

1. Adding \$2.6 million flexible CMAQ funds into the STP-Urban pot will give all the urban areas a 31.7% increase (this makes up losses experienced by urban areas following the 2000 Census due to the redistribution of funds based on 2000 Census populations)
2. \$1.2 million each to Billings and Great Falls annually to address carbon monoxide non-attainment (\$2.4 million total)
3. \$1.5 million would go to rapidly growing cities (defined as cities experiencing greater than 15 percent census place population growth between the last two decennial censuses)
Note: this funding is based on city place population so as to not encourage sprawl.
4. \$2 million to assist local governments in addressing air quality issues, e.g. intersection improvements, traffic signal synchronization projects, and purchase of sweepers and flush trucks.

Commissioner Howlett asked about a federal designation of class one air shed, such as the Flathead reservation. It's important to keep them from dropping below that level. Zanto said we have made areas considered high risk eligible for this funding to help that.

Currie clarified that we are not using any "new" money; we are using CMAQ money. We are not changing the laws as they pertain to the urban program. It is our intent that this funding proposal to use CMAQ monies to augment the urban program until the next census. This is a relatively long-term commitment. We also will be proposing to pass along any growth from the federal transportation bill to the urban and secondary programs.

Mike Kadas, mayor of Missoula, stood and expressed his thanks to the department for taking a look at this issue. He stood in support of the proposal, particularly in light of the traffic issues his community faces, and in general because the state (and indeed, the nation's) economy has become more service-driven than commodity producing. Urban areas are the engines of the economy and we need to keep them from clogging up.

Tim Burton, city manager for Helena, and on behalf of the city commission, stood in support of the proposal.

Jim Hansz, city engineer and public works director for the city of Kalispell, stood in support of the proposal.

Jim Reardon, public works director for the city of Great Falls, stood in support of the proposal on behalf of city management.

Chris Kukulski, city manager in Bozeman, stood in support of the proposal.

Zanto spoke on behalf of the city of Laurel. Steve Klotz called her yesterday and asked Zanto to express his support for the proposal.

Commissioner Rice moved to accept staff recommendations to approve the increase for urban funding; Commissioner Howlett seconded the motion. All four commissioners voted aye.

Agenda item 4: 2005 – proposed highway projects – continued

Larson, project analysis engineer, said some projects were submitted late and didn't make the first list submitted to the commission at their last meeting. We have a list of those projects on a separate list, in order to meet the 45-day public involvement process, and request they be added to the program.

Commissioner Espy moved to accept staff recommendations to approve the addition of these projects to the program: \$124,000 in partial preliminary engineering through this STIP amendment; Commissioner Howlett seconded the motion. All four commissioners voted aye.

Agenda item 5: Proposed safety projects

Larson said the cities and counties were involved in this process. Four of the sites are located on Indian reservations; two of those projects will be done by MDT maintenance forces and two will be contracted out. Because of funding limitations, only projects with a benefit-cost ratio of 3.34 and above will be pursued. Under the provisions of USC Section 132, we will transfer funding to the Forest Service for the project on Franks Lake Road near Eureka.

Commissioner Howlett acknowledged that the Bureau of Indian Affairs and tribal police do not always pass along crash data, and that's a national problem, but people are dying every day on the reservation's roads. He spoke to the issue of transferring funds to another federal agency, bearing in mind that the commission had recently denied a request to transfer funds to the Bureau of Indian Affairs. He said he fully supports the transfer concept but expressed concern about equity and consistency.

Galt said the section 132 transfer allows us to add conditions, and proposed to amend the staff recommendation to require that the project will be competitively bid.

Commissioner Anderson moved to accept staff recommendations to approve the priority list of projects with a benefit-cost ratio of 3.34 and above (a total of 62 projects), and approve the construction program for those projects with preliminary construction costs above \$50,000 and a cost-benefit ratio of 3.34 and above (13 projects of the 63 noted above); Commissioner Rice seconded the motion. All four commissioners voted aye.

More information was requested on the Bozeman flasher project.

Duane Williams, Traffic and Safety Bureau, came to answer a question about the project list. He said the three projects with cost-benefit ratio below 3.34 were Gray-toned accidentally.

=> Williams will send an e-mail to follow up with the details supporting the cost of the Bozeman flasher. Demont will distribute to the commissioners.

(continued)

Chairman Anderson said we have approved projects with a benefit-cost ratio above 3.34. We were also asked to approve all the Gray-toned projects. So, the three projects we dropped off earlier are back in. Currie clarified the intent was to ask the commission to approve the Gray-toned projects with a cost-benefit ratio of 2.82 and up.

Commissioner Rice moved to approve projects 64, 65 and 66; Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 9: Railroad crossing improvements west of Missoula

Commissioner Howlett moved to accept staff recommendations to approve the addition of a railroad-crossing project to the program. The project is located west of Missoula on Secondary 263, just south of its junction with Secondary 474, at reference post 9.359. MDT will pay approximately \$14,000 for the materials and Montana Rail Link will contribute labor to construct the crossing. Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 10: Increase in scope and cost to Columbia Falls project

Commissioner Rice asked about the 400 percent increase in cost. Larson said district staff told him this morning that the original estimate was low. Commissioner Rice said in the future that type of information would be helpful to note in the agenda materials.

Commissioner Howlett moved to accept staff recommendations to approve the expanded scope of work for this project at an estimated cost of \$743,000; Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 14: Award contracts from December 2 bid letting

Commissioner Rice moved to accept staff recommendations to approve the four projects presented:

- *Polson-East* STPP-NH 52-1(20)0
- *Safety improvements – N of Helena* STPHS 5809(19)
- *Bridger Creek – 3km NE of Bozeman* BR 86-1(25)3
- *Slide repair – NE of Hilger* STPP 43-1(21)21

Commissioner Espy seconded the motion. All four commissioners voted aye.

Agenda item 15: US 93 traffic signals – Hamilton

Commissioner Espy moved to delegate authority to MDT's chief engineer to award the first construction phase of this contract following a special letting in December; Commissioner Howlett seconded the motion. All four commissioners voted aye.

Agenda item 17: Letting lists

Frazier said we have some large lettings coming up: \$57 million for February, \$33 million for March, and \$27 million in May.

Commissioner Espy moved to accept staff recommendations to approve the letting lists as presented; Commissioner Howlett seconded the motion.

Currie said last year the department worked very hard to front-load the lettings. We did that on purpose to get the work out. This year I've asked the engineering division not to do that because we still don't have a clear picture of our funding. We have authorization through May and appropriation authority through the whole year, but that's without authorization authority. We've anticipated \$305 million for 2005. We anticipate being about where we were last year. I've asked the engineering division to have projects ready towards the end of the fiscal year so we can move them into the first letting of the next federal fiscal year if needed to maintain fiscal balance.

Commissioner Rice asked if this means a potentially lean summer for the contractors in 2005. Currie said he didn't think it will be much different from last year, although we will be letting some projects later than what we might normally.

All four commissioners voted aye.

Agenda item 18: Certificates of completion

Commissioner Espy moved to approve the certificates of completion for September and October of 2004; Commissioner Rice seconded the motion. All four commissioners voted aye.

Agenda item 19: Work/change orders

Commissioner Espy moved to accept staff recommendations to approve the work/change orders for September and October 2004; Commissioner Rice seconded the motion. All four commissioners voted aye.

Agenda item 20: Commission discussion

MCS permit revocation hearing

Drew Livesay, MCS administrator, suggested the commission allow the hiring of a hearings officer as a less time-consuming way to deal with the revocation hearing for a motor carrier. This is the first time we have done one of these. We are trying to do this right the first time, as Commissioner Rice stated earlier.

Commissioner Espy referred to her experience on the board of livestock and suggested a hearings officer would help keep the emotion out of it.

Commissioner Espy moved to accept staff recommendations to appoint a hearings officer to conduct the administrative hearing for the motor carrier whose permit privileges the department proposes to revoke; Commissioner Rice seconded the motion.

Reardon clarified that a hearings officer would be designated by the attorney general's office.

All four commissioners voted aye.

Tribal relations update

Commissioner Rice said the subcommittee plans to wait until after the legislation session to continue visits with tribal leaders. In the last two months, there have probably been about five new tribal leaders elected. We will go ahead on that basis. I need to amend my former deadline to something more realistic, such as July 1.

Currie – we have on record a motion for the commission to achieve this by December 2004.

Commissioner Rice moved to amend the deadline; Commissioner Howlett seconded. All four commissioners voted aye.

Policy options for special naming of highways and bridges

Currie summarized the various policy options available to the commission. No motion was made.

Agenda item 22: Next commission meeting

We will have an appreciation dinner for the commission once we know who is returning and not. The next meeting is set for February 10 in Helena.

Shiell Anderson, Chairman
Montana Transportation Commission

David A. Galt, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission